

STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD

---

IN RE: )  
 )  
 ) DOCKET NO. RPU-2022-0001  
MIDAMERICAN ENERGY COMPANY )  
 )  
 )  
 )

---

**ENVIRONMENTAL INTERVENORS’ OBJECTION TO MIDAMERICAN’S  
APPLICATION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER**

Environmental Law & Policy Center, the Iowa Environmental Council, and Sierra Club (Environmental Intervenors) submit this objection to MidAmerican Energy Company’s (MidAmerican) Application for Confidential Treatment and Protective Order (Application) filed on October 20, 2022. In support of this objection, the Environmental Intervenors state as follows:

**I. Introduction**

MidAmerican, a public utility, has proposed to commit billions of ratepayer dollars to a new investment in a substantial amount of additional wind and small amount of solar resources. As part of its advanced ratemaking case, it has aggressively attempted to shield key information from parties in the case and from the general public regarding its decision-making process, the best resources to add to its system, and the economics of its existing generating plants. This information includes a study regarding the economics of its coal plants (“Coal Plant Economics Assessment”) and an internal “Zero Emissions Study” aimed at assessing a pathway to zero emissions electricity. After months of attempting to hide the existence of these important generation studies altogether, MidAmerican has now filed them in the docket, but with that filing it has made an overly broad request for confidential treatment of the studies in their entirety. MidAmerican has supported that request with little more than general assertions. MidAmerican

has the burden of demonstrating that information is confidential, and its sweeping and unsubstantiated assertions do not meet that burden.

The Iowa Open Records Act policy states “that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others.” IOWA CODE § 22.8(3). According to the Iowa Supreme Court, “There is a presumption in favor of disclosure and a liberal policy in favor of access to public records.” *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 551 (Iowa 2021) (internal citations omitted).

MidAmerican’s overly broad confidentiality request is inconsistent with Iowa statute and caselaw, which clearly set a presumption that information is public and favors disclosure. MidAmerican should have submitted versions of the documents that redact only specific, demonstrably confidential information rather than making a blanket effort to hide the important information in the studies from the public. Making this information public is important for providing transparency and accountability regarding whether MidAmerican is prudently planning new generation to meet its highly visible public goal to transition to a zero emissions future. The Board should deny MidAmerican’s request to treat the entire studies as confidential and provide the redacted versions of the documents publicly in this docket.

## **II. Background**

The Environmental Intervenors filed a Motion to Compel documents that MidAmerican Energy Company claimed to be subject to the attorney-client, attorney work product, and/or self-critical analysis privileges on September 2, 2022. Specifically, Environmental Intervenors moved to compel production of a coal plant economic assessment conducted by Siemens (Coal Plant Economic Assessment) and a Zero Emissions Study (collectively, “the studies”). Other parties to

this proceeding, including Google LLC; Meta Platforms, Inc.; and Microsoft Corporation (collectively, Tech Customers), the Office of Consumer Advocate (OCA), and the Iowa Business Energy Coalition (IBEC) filed responses in support of the Motion. MidAmerican resisted the Motion to Compel.

Subsequently, MidAmerican agreed to provide the studies to parties in this docket who had previously entered a protective agreement to govern the exchange of confidential information and who entered an additional discovery agreement. The discovery agreement stipulated that the documents be produced subject to the protective agreement and that the terms of the protective agreement were not changed or altered. Under the discovery agreement, MidAmerican preserved its right to assert privilege of the documents, and the parties preserved their right to contest any assertion of privilege.<sup>1</sup> The protective agreement provides that “[t]he parties retain the right to question, challenge, or object to the designation (as Confidential or Confidential – Attorneys’ Eyes Only), production, non-production, admissibility, or inadmissibility of the Protected Material.”<sup>2</sup>

After providing the studies to the parties, MidAmerican filed the documents with the Iowa Utilities Board (Board) on October 20, 2022, along with the Application for Confidential Treatment to keep the documents confidential in their entirety.

Environmental Intervenors object to MidAmerican’s Application as overly broad. Contrary to MidAmerican’s assertion, the mere fact that the studies contain similar information to what has previously been presented to the Board and been granted confidential status (Application at 3) is not dispositive; the utilities frequently take an overly broad approach to confidentiality that the parties generally do not have the time or resources to challenge. In this case, the studies also

---

<sup>1</sup> Discovery Agreement attached as Exhibit A.

<sup>2</sup> Protective Agreement attached as Exhibit B.

contain high level analysis and conclusions similar to the type of information that is routinely made public in Board proceedings. In addition, the studies contain information that is highly relevant to the public interest. A redacted version of the studies can be publicly produced that will protect MidAmerican's concerns about confidential information while providing the transparency necessary to allow the public to better understand (1) whether MidAmerican is prudently ensuring it is only maintaining generating assets that are cost-effective for customers, as it has publicly asserted, (2) how it considered alternative actions that could save customer money, and (3) whether the utility is truly making decisions directed at meeting important clean energy goals, as the public has come to expect from MidAmerican based on the utility's public statements.

### **III. Iowa Law Favors Disclosure of Redacted Versions of the Studies.**

The Iowa Open Records Act states "that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others." IOWA CODE § 22.8(3). The Supreme Court has held "[t]here is a presumption in favor of disclosure and a liberal policy in favor of access to public records." *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 551 (Iowa 2021) (internal citations omitted). The purpose of the Open Records Act is "to open the doors of government to public scrutiny [and] to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act." *Id.* at 549 (citing *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 229 (Iowa 2019) (alteration in original) (quoting *City of Riverdale v. Diercks*, 806 N.W.2d 643, 652 (Iowa 2011))).

In that context, MidAmerican has filed this Application for confidential treatment of two important studies in their entirety pursuant to Iowa Code § 22.7(3), (6) and (18). MidAmerican has

supported that request with little more than general assertions. MidAmerican has the burden of demonstrating that information is confidential, and it has not met that burden.

MidAmerican is a public utility requesting the Iowa Utilities Board approve billions of dollars of new generating resources as part of an advanced ratemaking docket. The utility is a regulated monopoly that exists because the legislature created this framework for public utilities to serve the public interest in providing affordable and reliable clean electricity, and in exchange can collect money from customers to pay for the infrastructure needed to provide that electricity. The Board's work is done in public (to the extent possible) to ensure the public retains confidence that the outcome, which could include the approval of billions of dollars ultimately recovered from the utility's customers, is in the public interest. The Board should be judicious in applying confidentiality protections, and MidAmerican's blanket claims of confidentiality should not be allowed to shield non-confidential information that MidAmerican simply does not want the public to know.

MidAmerican's expressed confidentiality concerns center entirely around revealing sensitive information to competitors. MidAmerican states the information could be used to:

accurately evaluate MidAmerican's costs, cost tolerances, proprietary forecasting methodology, contract terms, contract vendors, revenue, net earnings, proprietary economic analysis, future market price assumptions, future fuel price assumptions, capacity factor assumptions, processes and methodologies for developing renewable projects, future generation operation and maintenance assumptions, and other proprietary information. Making any of the information referenced in this paragraph public would allow: (1) a potential MidAmerican supplier, vendor or competitor to directly or indirectly calculate or accurately estimate MidAmerican bidding strategies, cost assumptions, generation planning timelines, or other information related to MidAmerican's participation in wholesale generation markets; (2) a potential competitor to directly or indirectly calculate or accurately estimate MidAmerican's costs of power and energy sold in the wholesale market; (3) insight by MidAmerican's competitors and vendors (related to the development of renewables projects) about MidAmerican's costs, processes and methodologies for such development efforts, including timelines for additional generation needs;

or (4) insight by MidAmerican's competitors in the wholesale market for energy.  
(Application at 3.)

These are blanket concerns that MidAmerican has not attempted to tie to specific information contained in the studies. Nonetheless, these concerns can be addressed with redaction. Environmental Intervenors attach as Confidential Exhibits C and D to this Objection our proposed redacted versions of the two studies to remove information that could be used in analysis by competitors.<sup>3</sup>

**A. MidAmerican has not met its burden of proof to demonstrate that it could not protect its competitive interests by producing public versions of the documents with limited redactions.**

MidAmerican claims that the studies are “[t]rade secrets which are recognized and protected as such by law.” IOWA CODE § 22.7(3). MidAmerican also claims that the documents are confidential as a report to a government agency that “if released, would give advantage to competitors and serve no public purpose.” IOWA CODE § 22.7(6). The Iowa Supreme Court characterized the § 22.7(6) exception as being “narrow” and recognized that the burden of proving the elements of the exception rests with the party seeking confidentiality. *Iowa Film Prod. Servs. v. Iowa Dep’t of Economic Development*, 818 N.W.2d 207, 225, 228 (Iowa 2012).

MidAmerican has only made blanket assertions of trade secret and competitive information. Such general claims lack “the type of specific, individualized evidence” to show that releasing the documents “would give an advantage to their competitors.” *Iowa Film Prod. Servs. v. Iowa Dep’t of Econ. Dev.*, 818 N.W.2d 207, 225 (Iowa 2012). The high-level analysis and

---

<sup>3</sup> Environmental Intervenors note that the proposed redactions are to resolve the concerns MidAmerican has raised and to facilitate the release of the studies publicly in an expeditious manner. As a result, Environmental Intervenors’ redactions are broader than necessary and should not be taken to be a concession that all of that type of information should be treated confidentially in the future.

conclusions in the studies are neither trade secret nor information that will give advantage to competitors, and MidAmerican has made no effort to demonstrate that any specific information deserves confidential treatment. To the extent that there is specific trade secret information or information that could advantage competitors in the documents, such as specific costs for operating individual plants or for constructing new assets, the specific information can be redacted and protected while other information that does not reveal trade secret or proprietary information can be shared.

The type of information the Environmental Intervenors seek to make public is the same sort of information public utilities routinely make public. Making this information public will not harm MidAmerican's competitive interests. Utilities across the country are addressing how to responsibly transition to a low carbon emissions future, with the United States setting a national goal of achieving zero emissions electricity by 2035.<sup>4</sup> In doing so, they are evaluating the cost effectiveness of existing carbon-intensive generation (i.e., coal plants) and the costs of adding new carbon free generating assets. For example, Xcel Northern States Power, which serves Minnesota, has announced a goal of achieving net zero emissions by 2050.<sup>5</sup> As part of achieving that vision, the utility plans to close three coal plants by 2030 and to invest in up to 4,650 MW of solar, wind and storage by 2032.<sup>6</sup> These plans include building a 460 MW solar plant at a retiring coal plant,

---

<sup>4</sup> "The United States of America Nationally Determined Contribution - Reducing Greenhouse Gases in the United States: A 2030 Emissions Target," United Nations Framework Convention on Climate Change, (2021), at 3, *available at* <https://unfccc.int/sites/default/files/NDC/2022-06/United%20States%20NDC%20April%202021%202021%20Final.pdf> (last visited Nov. 2, 2022).

<sup>5</sup> "Xcel Energy commits to net-zero carbon goal by 2050" *available at* <https://co.my.xcelenergy.com/s/about/newsroom/press-release/xcel-energy-commits-to-net-zero-carbon-goal-by-2050-MCZE7IKJSPUBEI5K3MZ5D3AZ74UQ> (last visited Nov. 2, 2022).

<sup>6</sup> "Minnesota Public Utilities Commission Approves Xcel Energy's Resource Plan – Prioritizing Low Costs to Consumers, and Environmental and Community Protections," Minnesota Public

taking advantage of that coal plant's valuable interconnection rights.<sup>7</sup> Xcel's plan to transition off coal has attracted two huge data centers, including a Google center.<sup>8</sup> These are precisely the types of customers that MidAmerican has asserted are central to its continued growth. (*See, e.g.*, Brown Rebuttal at 6; 12; 13-14.) When it proposed its plan, Xcel made hundreds of pages of analysis public in support of its assertion that its plan was cost effective.<sup>9</sup> Types of information that Xcel makes public in its proposals to the Commission include: the resources (size, type, and timing) it believes are cost-effective to add to or remove from its system, including proposed coal plant retirements and findings that coal plants are uneconomic; detailed resource capacity expansion modeling results; key modeling assumptions, including assumptions regarding new resource costs, interconnection costs, capacity accreditation for new resources, gas and coal price forecasts, load forecast, and annual resource mix and resource needs or surplus by year; the scenarios or sensitivities it modeled; the cost differentials between various scenarios; carbon emissions associated with each scenario; and reliability data for scenarios.<sup>10</sup> The types of information that

---

Utilities Commission, available at <https://mn.gov/puc/about-us/news/archives/?id=14-518158>; see also MN PUC Final Order in docket no. 19-368, issued April 15, 2022.

<sup>7</sup> Utility Dive, "Minnesota PUC approves Xcel Energy's 460-MW solar project to replace Sherco coal-fired generation" (Sept. 16, 2022) available at <https://www.utilitydive.com/news/minnesota-puc-xcel-sherco-solar-coal/632015/> (last visited Nov. 2, 2022).

<sup>8</sup> Mark Reilly, "Xcel property in Becker eyed for another big data center project," Minneapolis/St. Paul Business Journal (Sept. 9, 2022), available at <https://www.bizjournals.com/twincities/news/2022/09/09/second-big-data-center-becker-xcel.html>; see also Mike Hughlett, "Mystery company plans \$1B data center on Xcel property in Becker," Minneapolis Star Tribune (Sept. 8, 2022), available at <https://www.startribune.com/mystery-company-plans-1-billion-data-center-on-xcel-property-in-becker/600204954/>

<sup>9</sup> Minnesota Public Utility Commission Docket No. 19-368, XcelEnergy Supplement, public version (filed June 30, 2020) available at [www.edockets.state.mn.us/edockets/searchDocuments.do?method=showPoup&documentId={F0AB0573-0000-C11C-B7B2-2FA960B89BD1}&documentTitle=20206-164371-01](http://www.edockets.state.mn.us/edockets/searchDocuments.do?method=showPoup&documentId={F0AB0573-0000-C11C-B7B2-2FA960B89BD1}&documentTitle=20206-164371-01) and attached as Exhibit E.

<sup>10</sup> *Id.*

Xcel marks confidential is limited to information such as forecasted annual capacity factors of particular assets; fixed, variable and capital costs to operate specific existing assets, and hourly load and generation data from existing generation. In sum, the utility makes public high-level assumptions, scenarios studied, and modeling results, but the specific modeling input and output files may contain confidential information. Even in Texas, a state that has adopted a competitive energy market model, utilities make information regarding the economics of particular generating assets public. In the attached example from Entergy, the utility names particular units and publicly discusses early retirement, redacting only the particular year in which they are proposing retirement.<sup>11</sup> Similarly, attached Exhibit G shows the voluminous detail of public information included in an Idaho utility's analysis of the economics of certain coal plants; attached exhibit H is a public analysis of the economics of a coal plant owned by a utility in Utah, and attached exhibit I is a public analysis from Mississippi.<sup>12</sup>

Iowa's other rate-regulated public electric utility, Interstate Power and Light Company (IPL), also provides similar information publicly. IPL filed its Clean Energy Blueprint in November 2020, which "will help inform IPL's near-term resource planning decisions." Docket No. RPU-2019-0001, "Alliant Energy's Iowa Clean Energy Blueprint: 2020 Resource Planning," (Filed Nov. 20, 2020), at 2.<sup>13</sup> The Blueprint publicly discussed planning scenarios and assumptions, the modeling approach, and analysis of the results. *Id.* IPL made public the high-level results, including short-term resource decisions such as the potential savings from coal plant

---

<sup>11</sup> Exhibit F, Direct Testimony of Amelia Meyers in Entergy docket no. 53719.

<sup>12</sup> Exhibit G, Idaho Coal Unit Environmental Analysis; Exhibit H, Tolk Analysis; Exhibit I, Review and Assessment of Mississippi Power Company's Reserve Margin Plan.

<sup>13</sup> RPU-2019-0001, Iowa Clean Energy Blueprint: Resource Planning (filed Nov. 20, 2020) available at

[https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET\\_FILE&allowInterrupt=1&RevisionSelectio nMethod=latest&dDocName=2045593&noSaveAs=1](https://wcc.efs.iowa.gov/cs/idcplg?IdcService=GET_FILE&allowInterrupt=1&RevisionSelectio nMethod=latest&dDocName=2045593&noSaveAs=1)

retirements or conversions. *Id.* IPL also publicly shared that solar was the most cost-effective new generation to construct. *Id.*

Environmental Intervenors seek to make public the same types of high-level information found in MidAmerican's studies as is routinely produced by other utilities. These utilities are undertaking the same clean energy transition as MidAmerican and are operating in nearby or overlapping geographic areas. MidAmerican's assertion that its competitive interests will be harmed by making this information public is therefore without merit. MidAmerican bears the burden of proof of demonstrating its competitive interests will be harmed, and has not done so through its bare-bones application.

**B. The studies at issue are highly relevant to this proceeding and producing redacted versions is in the public interest.**

In addition to requiring a demonstration of competitive interests, Iowa Code section 22.7(6) requires a party seeking to maintain confidentiality to show the release would “serve no public purpose.” IOWA CODE § 22.7(6). The release of the studies would clearly serve a public purpose and MidAmerican has made no effort to demonstrate otherwise. *Ne. Council on Substance Abuse v. Iowa Dep't of Pub. Health, Div. of Substance Abuse*, 513 N.W.2d 757, 760 (Iowa 1994) (“Turning to the exception in section 22.7(6), we note that NECSA must prove two things: the past application grants would give advantage to NECSA's competitors *and* their release would serve *no* public purpose.”).

MidAmerican has a goal of reaching net-zero greenhouse gas emissions. This goal has a prominent place on the company's website, and MidAmerican consistently centers customer demand for zero emissions electricity as the key rationale for its pursuit of additional carbon free electricity. (*See, e.g.*, Brown Direct at 4; Fehr Direct at 2.) Further, MidAmerican asserts that its “[p]ast and future investments are positioning MidAmerican to reach its goal of achieving net-zero

greenhouse gas emissions . . . .”<sup>14</sup> The analyses that MidAmerican has claimed are privileged are critical to understanding the most reasonable pathway to achieving zero emissions electricity, in two major ways: first, they provide critical insight into *the methodology* by which MidAmerican conducts resource planning and addresses the question of how to make progress towards a zero-emissions resource mix should be approached. The advanced ratemaking principles statute requires “the rate-regulated public utility [to] demonstrate[] to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply.” IOWA CODE § 476.53(c)(2). Multiple parties in this proceeding, including Environmental Intervenors but also customer groups, have challenged the sufficiency of MidAmerican’s qualitative “nine factor analysis” in meeting this burden. (*See, e.g.*, Guyer Direct at 3-31; OCA Tessier Direct at 22-38.) Importantly, the studies show that [REDACTED]

[REDACTED]

In fact, the Zero Emissions Study [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Second, the analyses provide information important to understanding the most cost-effective way for MidAmerican to achieve a zero emissions future.

---

<sup>14</sup> Jablonski, Adam, “MidAmerican Adds Solar Energy in Journey to Net Zero (Oct. 5, 2022) available at [www.dsmpartnership.com/news-media/blog/midamerican-adds-solar-energy-in-journey-to-net-zero](http://www.dsmpartnership.com/news-media/blog/midamerican-adds-solar-energy-in-journey-to-net-zero) (last visited Nov. 2, 2022).

This information must be made public in order to provide accountability and transparency into MidAmerican's proposed investments and resource decisions. The clean energy transition will require billions of dollars in investment that, if approved, can be recovered from MidAmerican's customers, plus a guaranteed rate of return. Moreover, MidAmerican's current public plans to run its coal units into the 2040s comes at significant cost – costs that ratepayers pay through rates and riders. Ratepayers deserve to know how much MidAmerican's decisions are costing them. MidAmerican is also required by law to demonstrate that its use of ratepayer dollars is prudent. Part of that is demonstrating that its actions are supported by planning and analysis showing not only the cost-effectiveness of the utility's resource plans, but also that the proposal is in fact going to advance the utility's clean energy transition as the company has asserted.

The public interest is also deeply concerned with ensuring that Iowa's utilities take prudent steps to reduce carbon emissions and transition to a true zero emissions portfolio. The Coal Plant Economic Assessment and Zero Emissions Study contain information underscoring an essential point that Environmental Intervenors have repeatedly made in testimony: the steps needed to make progress towards a lower carbon future require the evaluation of the long-term role of coal-fired generation in MidAmerican's resource mix, from both a cost and reliability perspective. MidAmerican's customers and the Iowa public have demonstrated an interest in understanding this issue. To date, MidAmerican has strongly and successfully resisted any transparency or public ability to examine whether coal generation is in fact needed to support affordable and reliable clean electricity in Iowa.

Moreover, through the passage of the Inflation Reduction Act, \$370 billion will be infused into the national economy to support this transition, and the share of those dollars that come to

MidAmerican's customers – and to the Iowa economy – is greatly impacted by MidAmerican's resource addition planning decisions.

The studies provide much-needed transparency and accountability into this question and serve an important public purpose. MidAmerican's request to hold the entirety of the documents as confidential is overly broad, without merit, and harms the public interest.

The public interest would be substantially harmed by the failure to make this information public. MidAmerican is requesting approval of billions of dollars of investment. Environmental Intervenors have filed testimony in this case asserting that MidAmerican's coal plants may be costing customers too much to continue operating, and that MidAmerican should be taking steps to assess which resources it should add in order to facilitate uneconomic coal units' timely retirements. (Glick Direct at 18-35, 49-53.) For the first time, the Zero Emissions Study and the Coal Plant Economic Assessment provide insight into MidAmerican's perspective into these issues. Making key high-level information public will assist the public in assessing the validity of Environmental Intervenors' and MidAmerican's claims. The studies also directly address the methodology through which MidAmerican believes the questions of existing and new resource cost-effectiveness should be evaluated, another key issue in this case.

Another reason the generation studies are important is that they are the only pieces of analysis that predate selection of Wind PRIME as the right set of new resource additions to be making on customers' behalf. As Environmental Intervenor witness Glick testified, "The Company presents zero pieces of analysis in its application that preceded the development of the Wind PRIME portfolio." (Glick Direct at 19.) Improper investments through this proceeding will harm the public if MidAmerican's decisions ultimately increase costs and emissions for Iowa customers. Customers have a strong interest in understanding the high-level conclusions MidAmerican

reached before it makes a major investment. MidAmerican is asking for approval of a \$4 billion expenditure of ratepayer dollars, and the public cannot be confident that the investment is reasonable or prudent if MidAmerican is using overly broad confidentiality claims to prevent the public from seeing MidAmerican's own studies exploring alternate plans.

**C. Iowa Code § 22.7(18) does not apply to the studies.**

MidAmerican also claims that the documents are confidential pursuant to Iowa Code section 22.7(18), which applies to communications not required by law, rule, procedure or contract. MidAmerican only supports this claim with a general statement paraphrasing statutory language that "if released, would threaten the economic interests of MidAmerican and its customers, serve no public purpose, and would discourage such communications in the future." (Application at 7.) MidAmerican simply repeats previously asserted arguments and adds that it would discourage communication without any explanation.

MidAmerican's attempt to apply this section of code is misplaced. MidAmerican does not cite any case law supporting application of this exception to disclosure. Cases applying section 22.7(8) have been related to personal information such as employment or personal information that might not be forthcoming if subject to disclosure. *See e.g. Des Moines Indep. Cmty. Sch. Dist. Pub. Recs. v. Des Moines Reg. & Trib. Co.*, 487 N.W.2d 666, 667, 670 (Iowa 1992) (related to employment applications and investigation); *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 552-53 (Iowa 2021) (related to property records). MidAmerican produced the documents in discovery as part of a Board proceeding subject to protective agreement. The documents were produced pursuant to Board procedural rules and the Iowa Rules of Civil Procedure. Similar documents could be produced pursuant to Board rule or discovery procedures in future proceedings or pursuant to Board request under Iowa Code section 476.2(4). In fact, MidAmerican only

produced the documents to resolve a motion to compel following a Board finding that the documents were relevant to the proceeding. MidAmerican has aggressively resisted public disclosure of the documents, but MidAmerican will still be subject to Board oversight and discovery in future dockets regardless of disclosure here. MidAmerican does not meet the categorical threshold for Iowa Code section 22.7(18) to apply.

#### **IV. MidAmerican's Studies Are Not Privileged.**

To support its Application for Confidential Treatment, MidAmerican argues that the documents are privileged. (Application at 2.) MidAmerican does not make any arguments beyond its assertion that the documents are subject to attorney-client, work product and/or self-critical analysis privileges. MidAmerican has not established that these documents are privileged in its Application. MidAmerican has not previously established the documents as privileged, although it has been a subject of dispute between the parties. Environmental Intervenors agreed to withdraw our Motion to Compel when MidAmerican produced the documents subject to the protective agreement. MidAmerican preserved its ability to assert privilege related to the studies, and Environmental Intervenors preserved our ability to challenge any privilege assertions by MidAmerican. To the extent that MidAmerican relies on its previous privilege assertions here as a basis for demonstrating privilege without introducing anything with its Application, Environmental Intervenors' arguments in the Motion to Compel addressing MidAmerican's previous privilege claims rebut those claims and are incorporated by reference.

In fact, with the opportunity to review the documents, it is apparent that the documents are clearly the type of analyses conducted as part of routine utility planning, and are also the type of analyses the Board reviews on a regular basis. After review, MidAmerican's claim seems less

about protecting privilege and more about excluding evidence that may cut against the reasonableness of its approach to proposing the Wind PRIME projects, as well as its conclusions about which projects to add.

MidAmerican made only a general claim that the documents were prepared in anticipation of litigation to support its privilege claims. MidAmerican argued that an affidavit from General Counsel Rob Berntsen demonstrated the documents were created in anticipation of litigation and that context shows they satisfy the “because of” test for attorney work product. (MidAmerican Resistance to Motion to Compel (filed Sept. 16, 2022) at 3-4.)

The fact that counsel requested the studies is not dispositive. The Iowa Supreme Court in *Wells Dairy, Inc. v. American Indus. Refrigeration, Inc.*, 690 N.W.2d 38, 48-49 (Iowa 2004) weighed the affidavit of Douglas Wells, which stated a consultation was sought for legal purposes, against an *in camera* review of the report sought to be withheld. The Court noted that despite the affidavit, a review of the document’s contents demonstrated that “stated purpose and goals ha[d] nothing to do with ... the manner in which litigation should be addressed. Rather, the report list[ed] three project goals that concern[ed] the business of Wells Dairy.” *Id.* In the same way, the analyses MidAmerican claims as privileged focus on business decisions rather than litigation.

MidAmerican further claimed that the fact it produced other generation studies shows that it thoughtfully considered what met the standard for attorney-client privilege. These other studies instead show that generation planning is a regular part of MidAmerican’s business, as it is for all electric utilities. Because electric utilities may only recover prudently made expenditures, assessing and planning for those investments is a core business purpose and is not conducted “because of” the prospect of litigation. MidAmerican’s business decisions are subject to regulatory review by the Board. To claim that every business decision can be subject to attorney work product

because it could be subject to Board review would eviscerate the regulatory framework and leave a monopoly utility without effective oversight and regulation.

## V. Conclusion

MidAmerican's request to hold the Zero Emissions Study and Coal Plant Economics Assessment confidential in their entirety is an overly broad request that is not supported by Iowa law. High level information contained in these documents provides transparency and supports accountability into whether and how MidAmerican is prudently planning to meet its highly visible public goal to transition to a zero emissions future. Providing redacted versions of these documents to the public will allow for greater accountability and for the public to better monitor whether MidAmerican is pursuing its goals on ratepayers' behalf in a prudent and reasonable manner. The Board should deny MidAmerican's request for confidential treatment and provide the redacted versions of the documents in this docket, as proposed in attached Exhibits C and D.

Respectfully submitted this 3rd day of November 2022.

/s/ Joshua T. Mandelbaum

Joshua T. Mandelbaum (AT0010151)  
Environmental Law & Policy Center  
505 5th Avenue, Suite 333  
Des Moines, Iowa 50309  
P: (515) 244-0253  
[jmandelbaum@elpc.org](mailto:jmandelbaum@elpc.org)

/s/ Michael R. Schmidt

Michael R. Schmidt (AT0013962)  
Iowa Environmental Council  
505 5th Avenue, Suite 850  
Des Moines, Iowa 50309  
P: (515) 244-1194 x212  
[schmidt@iaenvironment.org](mailto:schmidt@iaenvironment.org)

/s/ Laurie Williams

S. Laurie Williams, *pro hac vice pending*  
Senior Attorney  
Sierra Club  
1536 Wynkoop St. Ste. 200  
Denver, CO 80202  
P: (303) 454-3358  
Email: [laurie.williams@sierraclub.org](mailto:laurie.williams@sierraclub.org)